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PTOL-90A (Rev. 10/06)

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

MAILED

Application Number: 09/654,858
Filing Date: September 05, 2000
Appellant(s): ALTWIES ET AL.

APR **1 9** 2007

GROUP 3600

DARIEN K. WALLACE
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 16th, 2005 appealing from the Office

action mailed March 5th, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

20010011341   Hayes et al   08-2001

20020107809   Biddle et al   08-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

See office action mailed March 25, 2005

(10) Response to Argument

Applicants argue the prior art Biddle et al fail to teach

A licensing module as recited in claim 10.

A program module as recited in claim 18.

Storing software application

Applicants further argue that Hayes fail to teach

Downloading some desktop objects for which permission is granted.

Examiner respectfully disagrees with Applicants' characterization of the prior arts.

Biddle clearly teach an invention whereby a user is able to configure his or her desktop so as

presumably to be able to access an application on the server when, in fact, the user does not

have system permission to access the application. When the user logs onto the system, the user

identifies him or herself to the server by means of a system identifier and a password. The server

uses this information to built dynamically a list of applications to which the user has access

permission. That list is transmitted to the users station. Biddle et al further teach a profile

manager 206 on the client side allows the administrator to configure user applet preferences at

both user and group levels. The administrator can create new users and group hierarchies, add

users to different groups, specify applet permissions for each group and for individual users. And

the administrator can configure applets in the context of an individual user or a group. The

administrator can add, delete and reset passwords for users. Profile management support is

transparent to the general user. The administrator can invoke the profile manager 206 in the

context of any user or group. Only the administrator can change from his/her context to

administer clients (users) and groups. The server will not allow a user without administrative

authority to switch context. When a request comes into the server, it will query the authenticated

ID of the user trying to access this function. If the user does not possess administrative authority,

(i.e., is not a member of the AllUsers.Administrator group), the Profile Manager Servlet 214 will

reject the request. Hayes et al teach The software licensing management method includes the

following exemplary steps: (1) the vendor/developer creates a software application product to be

licensed; (2) the vendor/developer identifies a hardware system to act as a licensing management

platform and installs the license management server software on that system; (3) using tools

integrated with the licensing management software, the vendor/developer generates optionally

customized instructions for wrapping license management code around the application to create a

license management protected application; (4) the protected application may then be packaged

and delivered to end-user licensees for subsequent installation and use; (5) when a local instance

of the protected application is instantiated by the end-user licensee management client, the

management client requests authorization from the license management server to provide

appropriate access to the wrapped application; and (6) the vendor/developer installs optionally

customized database views for order fulfillment and field support systems to receive product

orders and/or to manage sales.

Furthermore, Examiner noticed that Applicant use functional language (i.e. an ecommerce site for) in the claim. Aplicant(s) are reminded that optional or conditional elements do not narrow the claims because they can always be omitted. "As a matter of linguistic precision, optional elements do not narrow the claim because they can always be omitted." *In re Johnston*, 435 F.3d 1381, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006)(affirming the Board's claim construction of "further including that said wall may be smooth, corrugated, or profiled with increased dimensional proportions as pipe size is increased" since "this additional content did not narrow the scope of the claim because these limitations are stated in the permissive form 'may.'"). See also *e.g.* MPEP §2106 II C: which states, "Language that suggest or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. [Emphasis in original.]" For sake of clarity, a map chart of the broadest claim is presented.

Broadest claim 10

Claim limitations	*Prior art (Biddle)*
An improved system for software distribution over wide area computer networks, said networks comprising a network conduit, at least one e-commerce server computer in communication with said network conduit, at least one customer terminal computer in communication with said network conduit, and at least one supplier server computer in communication with said network conduit, each said computer comprising at least one programmable computer comprising input device, display device, processing device,	A global location for third party software development companies to distribute software tools is also disclosed *(pp 0016)*.

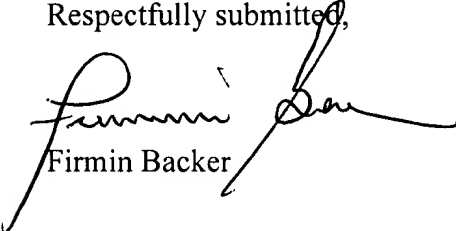| storage device and device for communicating with said network conduit	
an e-commerce site for distributing licensing modules to each said customer terminal computer via said network conduit	license management and access control service 72 (licensing server service). This is installed, in one preferred exemplary embodiment, as a system service on the licensing server for controlling access to the database 49 by the vendor 40 using an access tool 67, 68, 69 or 71 and by the user 30 running a protected application. The table in FIG. 4 shows exemplary program features and various views available to the user 30 when using access tool 67, 68, 69 or 71. The service 72, in one exemplary aspect, listens for incoming requests on a specified port, determines how many license requests may be processed at one time and the length of time that a license request will run before being terminated; and processes license requests *(pp 0059)*.
a program download site for distributing program modules to each said customer terminal computer via said network conduit	the distributor 25 sends a "toolkit" to the vendor (step 106). Vendor 40 uses the toolkit to prepare the vendor software by making modifications to the software applications (step 110). Vendor 40 then compiles the software application with the new modifications and additions and sends the compiled version of the software to the distributor 25. The distributor 25 wraps the software and sends it back to the vendor 40 (step 114). The vendor 40 then adds the wrapped software application to an install program (step 118) and sends it back to the distributor 25. The distributor 25 then adds the software application to the electronic store (step 122) to allow users 30 to download the software application to a user computer (step 126). After downloading and installing the application, user 30 has the option of obtaining a license for the application, for example, either in the form of a free trial period, by purchasing a subscription, or purchasing a long-term license (step 128). After obtaining a license, user 30 can then run the application *(pp 0054)*.
wherein said licensing modules and said program modules each comprise executable software applications for execution on programmable computers, one said licensing module cooperating with one said program	The software code provided in the toolkit may also include licensing application programming interface (API) calls which are substituted during the wrapping process with a final version of the licensing API code provided by the distributor 25.

module to function as a whole software application, said distribution of one said program module is responsive to the prior execution of one said licensing module on one said customer terminal computer	This code may, for example, run security checks when the vendor software is running on the user computer 30 and contributes to the overall security that the distributor provides for the vendor software application. In accordance with one embodiment of the present invention, the software code, provided by the distributor and integrated by the vendor 40 into the software application, allows the distributor 25 to add appropriate anti-piracy and tampering checks during the wrapping process described herein. This, inter alia, reduces the vendor's responsibility for spending additional time and/or resources to engineer the appropriate security measures in each software application. In addition, the present invention reduces the vendor involvement in security violation issues and transfers the responsibility to the distributor or to the security technology provider (*pp 0073)*

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Firmin Backer/

Conferees:

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